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525266—43

In the Supreme Court of the United States

OCTOBER TERM, 1942

NOS. 907 AND 908

COLGATE-PALMOLIVE-PEET COMPANY, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 1–8) is reported at 37 F. Supp. 794. The opinion of the Circuit Court of Appeals (R. 39–47), as amended (R. 52–54, 60), is reported at 130 F. 2d 913. A dissenting opinion in that court, rendered on rehearing, appears at R. 54–56.

JURISDICTION

The order of the Circuit Court of Appeals entered November 11, 1942 (R. 60), denying a petition for a second rehearing, confirmed the judgments of the court previously entered (R. 56–57).

By order of a Justice of this Court dated February 3, 1943, the time for filing a petition for certiorari was extended for a period of sixty days from and after February 10, 1943 (R. 62). The petition for a writ of certiorari was filed April 10, 1943. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the tax imposed by Section 602½ of the Revenue Act of 1934, and by that section as amended, upon the "first domestic processing" of certain oils, applies to the first domestic processing after the effective date of the Act of oils which had received one or more domestic processings prior to that date.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are set out in the Appendix, *infra*, pp. 5–8.

STATEMENT

Section 602½ of the Revenue Act of 1934 (Appendix, *infra*, p. 5) imposed a tax upon the "first domestic processing" of certain vegetable oils. On May 10, 1934, the effective date of the Act, petitioner had on hand a large quantity of these oils which had received one or more domestic processings. From May 10, 1934, to January 31, 1937, petitioner further processed the oils, and paid a tax upon their first domestic processing after the

effective date of the Act (R. 10–24, 26–38). Petitioner then brought suits for refund of the amounts so paid, contending that the tax was improperly collected since the oils had already been subjected to a "first domestic processing" prior to the effective date of the Act (R. 1–5). The District Court dismissed the complaints (R. 1, 25). On appeal, the Circuit Court of Appeals affirmed (R. 47–48). Thereafter it granted a petition for rehearing (R. 51), and again affirmed, one judge dissenting (R. 52–57). The court denied a petition for a second rehearing (R. 60).

ARGUMENT

Treasury Regulations 48, promulgated under Section 602½ of the Revenue Act of 1934, define "first domestic processing" to mean "the first use in the United States on or after the effective date of the Act."[1] The decision below sustains the validity of the Regulations and accords with the decisions in *Loose-Wiles Biscuit Co.* v. *Rasquin*, 95 F. 2d 438 (C. C. A. 2), certiorari denied, 305 U. S. 611, and *Tasty Baking Co.* v. *United States*, 38 F. Supp. 844 (C. Cls.), certiorari denied, 314 U. S. 654. There is no conflict with the decision of any other Circuit Court of Appeals, and none is

[1] These Regulations were promulgated August 17, 1934, and, as modified to conform to amendments to the statute, have been continuously in effect since that time. The definition of "first domestic processing" referred to appeared in the original Regulations as Article 1 (1). It appears in the amended Regulations as Article 1 (n) (Appendix, *infra*, pp. 7–8).

alleged. The problem of statutory construction here involved concerns only stocks of oil on hand on May 10, 1934, and is thus not of continuing importance. We are informed by the Bureau of Internal Revenue that although claims for refund in some 100 similar cases were filed by taxpayers following the enactment of the Revenue Act of 1934, all but five, aside from the instant case, have been disposed of during the past nine years. The problem is of less consequence today than it was when the petition for certiorari in the *Tasty Baking* case was denied, in October 1941.

CONCLUSION

The case does not call for review by this Court. It is respectfully submitted that the petition should be denied.

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MAY 1943.

APPENDIX

Revenue Act of 1934, c. 277, 48 Stat. 680, 763:

SEC. 602½. PROCESSING TAX ON CERTAIN OILS.

(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernal [1] oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other pos-

[1] So in original.

session of the United States or (C) was brought into the United States on or before the 30th day after the date of the enactment of this Act or produced from materials brought into the United States on or before the 30th day after the date of enactment of this Act, or (D) was purchased under a bona fide contract entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term "first domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

Revenue Act of 1936, c. 690, 49 Stat. 1648, 1742:

SEC. 702. PROCESSING TAX ON CERTAIN OILS.

(a) The first sentence of section 602½ of the Revenue Act of 1934 is amended to read as follows:

"(a) There is hereby imposed upon the first domestic processing of coconut oil,

palm oil, palm-kernel oil, fatty acids derived from any of the foregoing oils, salts of any of the foregoing (whether or not such oils, fatty acids, or salts have been refined, sulphonated, sulphated, hydrogenated, or otherwise processed), or any combination or mixture containing a substantial quantity of any one or more of such oils, fatty acids, or salts, a tax of 3 cents per pound to be paid by the processor, but the tax under this section shall not apply (1) with respect to any fatty acid or salt resulting from a previous first domestic processing taxed under this section or upon which an import tax has been paid under section 601 (c) (8) of the Revenue Act of 1932, as amended, or (2) with respect to any combination or mixture by reason of its containing an oil, fatty acid, or salt with respect to which there has been a previous first domestic processing or upon which an import tax has been paid under such section 601 (c) (8)."

(b) Notwithstanding the provisions of subsection (a) of this section, the first domestic processing of sunflower oil or sesame oil (or any combination or mixture containing a substantial quantity of sunflower oil or sesame oil), if such oil or such combination or mixture or such oil contained therein was imported prior to the effective date of this title, shall be taxed in accordance with the provisions of section 602½ of the Revenue Act of 1934 in force on the date of the enactment of this Act.[2]

[2] Section 602½ of the Revenue Act of 1934, as amended, was carried into the Internal Revenue Code as Sections 2470–2482 (U. S. C., Title 26, Sec. 2470–2482).

Treasury Regulations 48, promulgated under the Revenue Act of 1934:

> Art. 1 [as amended by T. D. 4695, XV-2 Cum. Bull. 324. (1936)]. *Definitions.*— When used in these regulations, the term—
>
> * * * * *
>
> (*n*) ***First domestic processing*** means the first use in the United States on or after the effective date of the Act. At all times in these regulations, the term *processing* or *first domestic processing* will be deemed to be synonymous with "use" or "first use in the United States on or after the effective date," respectively. * * *.

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